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| DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, CO 80202 <hr/> GERALD ROME, Acting Securities Commissioner for the State of Colorado, Plaintiff, v. JOHN C. BALL, THE RESORT AT PIKES PEAK, LLC, Defendants. | <div style="text-align: center;"> <input type="checkbox"/> COURT USE ONLY <input type="checkbox"/> </div> |
| JOHN W. SUTHERS, Attorney General CHARLES J. KOOYMAN, 43595* Assistant Attorney General Ralph L. Carr Judicial Building 1300 Broadway, 10 th Floor Denver, CO 80203 Tel: (720) 508-6440 Fax: (720) 508-6037 Charles.Kooyman@state.co.us *Counsel of Record | Case No.: Courtroom: |
| COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF | |

Plaintiff, Gerald Rome, as Acting Securities Commissioner for the State of Colorado, by and through his counsel, the Colorado Attorney General, submits his Complaint against the Defendants and alleges as follows:

JURISDICTION

1. Plaintiff Gerald Rome is the Acting Securities Commissioner for the State of Colorado (the “Commissioner”), and is authorized pursuant to § 11-51-703, C.R.S., to administer all provisions of the Colorado Securities Act (the “Act”). Pursuant to § 11-51-602, C.R.S., the Commissioner is authorized to bring this action against the Defendants and to seek temporary, preliminary, and permanent injunctive relief and other equitable relief upon sufficient evidence that the Defendants have engaged in or are about to engage in any act or practice constituting a violation of any provision of the Act.

2. Pursuant to § 11-51-602(1), C.R.S., venue is proper in the district court for the City and County of Denver, Colorado.

SUMMARY OF ALLEGATIONS

3. John Ball and The Resort at Pikes Peak, LLC spent years soliciting investors for money to build a ski resort on land they didn't own. Their efforts to take money from investors were undeterred by material facts that they did not see fit to disclose to those they solicited. These include the fact that Ball had no unclouded right to purchase the land on which he promised to build a ski resort and that Ball and his company did not register the securities they offered nor did those securities qualify for exemption from registration. Ball and The Resort at Pikes Peak continued their efforts to take investor money even after both had been ordered by the Commissioner to cease and desist from their violations of the Act.

4. The Defendants never disclosed these facts to investors, instead making wildly misleading promises regarding the potential returns and security of the investment offered. By doing so, the Defendants violated the registration and antifraud provisions of the Act, and their continued violations of the Act violated an order issued by the Commissioner. Accordingly, a permanent injunction against the Defendants should be entered.

DEFENDANTS

5. The Resort at Pikes Peak, LLC ("Resort") is a limited liability company organized under the laws of Colorado on November 24, 2007. Resort was purportedly created to build a ski resort in Teller County, Colorado, west of Pikes Peak. The Colorado Secretary of State currently lists Resort as a "delinquent" entity.

6. John Calvin Ball is an adult male individual whose last known residential address is 341 Spruce Street in Boulder, Colorado 80302. Ball was the managing director and chief executive officer of Resort.

PRIOR DISCIPLINARY HISTORY

7. Ball and Resort were the subject of a previous administrative enforcement action before the Commissioner in case number XY 11-CD-004 based on their offer of unregistered securities and fraudulent failure to disclose material facts, both in violation of the Act. The Staff of the Division of Securities filed a Verified Petition for Order to Show Cause with the Commissioner on October 19, 2010 (the "Verified Petition," attached as Exhibit 1 and incorporated herein). Ball, Resort, and the Deputy Securities Commissioner executed a Stipulation for Consent Cease and Desist Order Concerning the Resort at Pikes Peak, LLC and John Calvin Ball (attached as Exhibit 2 and incorporated herein). As stipulated, the

Commissioner entered a Consent Cease and Desist order (the “Cease and Desist Order” attached as Exhibit 3 and incorporated herein) on November 9, 2010 directing Ball and Resort to permanently cease and desist from selling or offering to sell securities in violation of the Act, including the registration, licensing, and antifraud provisions of the Act.

GENERAL ALLEGATIONS

8. The background of Ball and Resort’s efforts to create a ski resort on land to be purchased from Harvey T. Carter are detailed more fully in the Verified Petition. Further background is included in here where necessary and relevant.

9. In particular, the land Ball and Resort contracted to buy from Carter (the “Carter Property”) had been used by Carter as collateral for loans made to him by Buck Blessing. Accordingly, Blessing maintained a lien on the property and also had a right of first refusal should Carter ever sell the property.

10. In or around September 2008, Ball created a private placement memorandum (“PPM”) outlining his plan to build a ski resort on the Carter Property. Ball used the PPM to solicit individuals in Colorado as well as other states to invest in Resort.

11. The PPM dated September 24, 2008 stated that the offering period would end on May 1, 2009 unless extended for an additional 90 days. It also stated that all funds would be returned to investors if the minimum offering of \$600,000 was not raised. No funds raised through this or any other PPM were ever returned to investors by Ball or Resort.

12. Ball made minor changes to the PPM over the next several years, with at least three subsequent versions dated April 5, 2010, June 24, 2010, and March 6, 2012. Ball used all of these PPMs to solicit investors at various times. These PPMs were substantially identical to the original, and the substance of the offering remained the same – to raise capital to purchase the Carter Property and build a ski resort on it.

13. Ball raised over \$400,000 between late 2007 and July 2010. None of those funds were used to purchase the Carter Property.

14. Instead, Ball used virtually all of the funds he raised on personal expenses, including a trip to Las Vegas, Nevada, personal bills, and other living expenses.

15. As detailed in the Verified Petition, Ball began operating a website for Resort in or around February of 2008, www.skipikespeak.com. The Resort website was publicly available, and Ball and Resort solicited investors through it by posting

a business plan that told investors that a \$10,000 investment would generate a 64% return in two years. The Resort website included a mechanism for potential investors to request additional investment information but did not disclose any risk factors regarding Resort or with the contract to purchase the Carter Property. The Resort website is no longer operating and is currently listed as “suspended.”

16. Many Resort investors received promissory notes in exchange for their money. The promissory notes listed Ball as the borrower, usually carried a 12% interest rate, and contained a provision for converting the amount borrowed and accrued interest into equity in Resort under the terms of the PPM.

17. Ball also used the PPM to solicit direct investment in Resort. For example, in June 2010, Ball solicited a Colorado resident, MN, to invest in Resort. Ball provided MN with a PPM and asked for a minimum \$50,000 investment. Ball told MN that his investment would be secured by the Carter Property and that investors would be made whole through the sale of the property if Resort failed. MN wired \$50,000 to a Resort account controlled by Ball on July 7, 2010.

18. Ball never told MN that he would use the \$50,000 MN invested in Resort for personal expenses.

19. On July 15, 2010, after more than two years of soliciting investments in Resort, both in person and through a publicly available website, Ball filed a Form D notice of exempt offering of securities with the U.S. Securities and Exchange Commission. In the Form D, Ball claimed that Resort’s offering would not exceed one year.

20. On July 23, 2010, Ball filed a notice of exemption with the Colorado Division of Securities.

21. Ball failed to disclose on the Form D or the notice of exemption that he had been publicly soliciting investors through the Resort website.

The Division of Securities Investigation and Administrative Proceeding Against Defendants

22. In June 2010, the Colorado Division of Securities began an investigation into Ball’s solicitation of investors for Resort. A subpoena for documents was issued to Ball on July 14, 2010. Ball failed to produce documents, and the Commissioner filed a subpoena enforcement action in September 2010. The Denver District Court issued an order enforcing the subpoena on September 22, 2010.

23. On October 19, 2010, the Staff of the Colorado Division of Securities submitted its Verified Petition to the Commissioner alleging that Ball and Resort

had violated the registration and anti-fraud provisions of the Act. A hearing before the Securities Board was set for November 12, 2010.

24. On November 8, 2010, Ball signed a stipulation for a consent cease and desist order on behalf of himself and Resort. The Commissioner issued the Cease and Desist Order as stipulated on November 9, 2010, ordering Ball and Resort to stop selling securities in violation of the Act, including the registration and anti-fraud provisions.

Defendants' Continued Violations of the Act

25. On March 6, 2012, less than a year and a half after the Commissioner issued the Cease and Desist Order, Ball sent a large number of people an e-mail soliciting them to invest in Resort. The e-mail stated that "an astonishing series of events" had occurred that would benefit those willing to invest in Resort.

26. Attached to this March 6, 2012, e-mail was a high-pressure sales pitch drafted by Ball. In the sales pitch, Ball claimed that an investment in Resort would immediately generate returns. Ball guaranteed investors a 50% return on their investment, promising to either pay them \$3,000 or to buy the investor out if the investment did not perform as expected within the first two years.

27. Ball made no mention of the Cease and Desist Order in that solicitation, nor did he disclose that the title to the Carter Property was subject to a lien and right of first refusal by Blessing.

28. On information and belief, the PPM dated March 6, 2012 was revised for use in connection with this e-mail solicitation.

29. The March 6, 2012 PPM contained no reference to the Cease and Desist Order and did not disclose that Ball and Resort were subject to it.

30. Ball retained the services of a third party e-mail service to facilitate this e-mail solicitation, in what Ball described as a "large scale outreach to help us rapidly raise capital." This solicitation included, by Ball's own description, large numbers of people.

31. Ball and Resort did not register the securities offered through the March 6, 2012 e-mail or file for exemptions from registration with the Division of Securities or the Securities and Exchange Commission.

32. One potential investor, JB, responded to Ball's e-mail solicitation asking for details regarding the "astonishing series of events." JB also asked Ball about the Cease and Desist Order that JB had seen posted on the Division of Securities' website.

33. Ball answered JB's questions by claiming that Carter had transferred ownership of the land to Resort in exchange for a 44% ownership interest in Resort. Ball also claimed that Blessing, as the \$750,000 lien holder, had agreed to transfer his lien to Resort.

34. Ball also told JB that the Cease and Desist Order was simply the result of a jealous competitor and that the Division of Securities "found no reason to have a trial, or even a hearing." Ball described the Cease and Desist Order as simply a statement that he would follow the law, which he claimed to have already been doing.

MISREPRESENTATIONS OR OMISSIONS OF MATERIAL FACT

35. Both before and after the entry of the Cease and Desist Order, Ball and Resort failed to disclose to potential investors that the Resort securities they were offering were ineligible for exemption from the registration requirements of the Act because they had been offered through public solicitations.

36. Ball misled investor MN by telling him that his investment in Resort would be secured by the Carter Property when Ball knew that he and Resort did not own the Carter Property and that Blessing had a lien and right of first refusal on the Carter Property.

37. Ball misled investors by failing to disclose to them that he would use their funds for his personal benefit rather than to purchase the Carter Property or to finance legitimate operations of Resort.

38. In soliciting investors after the Cease and Desist Order had been entered by the Commissioner, Ball failed to disclose that he and Resort were subject to the order. The PPMs prepared by Ball after the Cease and Desist Order was entered contain no reference to the order and do not disclose that Ball and Resort were subject to it.

FIRST CLAIM FOR RELIEF

(Offer or Sale of Unregistered Securities)
§ 11-51-301, C.R.S.

39. Paragraphs 1 through 38 above are incorporated herein by reference.

40. The notes and membership interests in Resort are securities as defined by § 11-51-201(17), C.R.S.

41. By engaging in the conduct described above, Defendants have made “offers to sell” or “sold” securities in or from the State of Colorado pursuant to § 11-51-201(13), C.R.S.

42. The securities that Defendants offered or sold were not registered or exempted from registration as required by § 11-51-301, C.R.S.

43. The Commissioner is entitled to an award of damages, interest, costs, attorneys’ fees, restitution, disgorgement and other equitable relief on behalf of persons injured by the conduct of Defendants pursuant to §§ 11-51-604(1) and (5), C.R.S. through operation of 11-51-602(2) (based on violations of § 11-51-301). The Commissioner is also entitled to a temporary, preliminary and permanent injunction pursuant to §§ 11-51-602, C.R.S. (based on violations of § 11-51-301) against Defendants, their agents, servants, employees, successors and attorneys-in-fact, as may be; any person who, directly or indirectly, through one or more intermediaries, controls, or is controlled by or is under common control with Defendants; and all those in active concert or participation with Defendants.

SECOND CLAIM FOR RELIEF

(Securities Fraud)

§ 11-51-501, C.R.S.

44. Paragraphs 1 through 43 above are incorporated herein by reference.

45. The conduct described above in this Complaint constitutes violations of the Act in that, in connection with the offer, sale, or purchase of securities in Colorado, Defendants, directly or indirectly:

- a. employed a device, scheme, or artifice to defraud;
- b. made written and oral untrue statements of material fact or omitted to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading; or
- c. engaged in acts, practices or courses of business which operated and would operate as a fraud and deceit on investors,

all in violation of § 11-51-501(1), C.R.S.

46. Accordingly, Defendants are liable to the Commissioner for damages under § 11-51-604(4), C.R.S., by operation of § 11-51-602(2), C.R.S., based upon violations of § 11-51-501(1)(a), (b), and (c), C.R.S.

47. The Commissioner is entitled to an award of damages, interest, costs, attorneys' fees, restitution, disgorgement and other equitable relief on behalf of persons injured by the conduct of Defendant pursuant to §§ 11-51-602(2), C.R.S., based upon violations of § 11-51-501, C.R.S. The Commissioner is also entitled to a temporary, preliminary and permanent injunction pursuant to § 11-51-602, C.R.S., based upon violations of § 11-51-501, C.R.S., against Defendants, their agents, servants, employees, successors and attorneys-in-fact, as may be; any person who, directly or indirectly, through one or more intermediaries, controls, or is controlled by or is under common control with Defendants; and all those in active concert or participation with Defendants.

THIRD CLAIM FOR RELIEF
(Violation of Cease and Desist Order)

48. Paragraphs 1 through 47 are incorporated herein by reference.

49. By engaging in the conduct described above, the Defendants have violated the registration provisions of the Colorado Securities Act under §11-51-301, C.R.S., and the anti-fraud provisions under § 11-51-501, C.R.S. This conduct also constitutes a violation of the 2010 Cease and Desist order issued by the Securities Commissioner pursuant to § 11-51-606(2)(a), C.R.S. Pursuant to the terms of the Cease and Desist Order, Resort and Ball, as well as their agents and others acting on their behalf, were ordered to cease and desist from engaging in conduct in violation of the Colorado Securities Act.

50. The Commissioner is entitled to an award of damages, interest, costs, attorneys' fees, restitution, disgorgement and other equitable relief on behalf of all persons injured by the conduct of the Defendants pursuant to § 11-51-602, C.R.S. (based on violations of the Colorado Order). The Commissioner is also entitled to a temporary, preliminary and permanent injunction pursuant to § 11-51-602, C.R.S. (based on violations of the Colorado Order) against the Defendants, their agents, servants, employees, successors and attorneys-in-fact, as may be; any person who, directly or indirectly, through one or more intermediaries, controlled, or is controlled by or is under common control with the Defendants and all those in active concert or participation with the Defendants.

WHEREFORE, Plaintiff prays for relief as follows:

1. For preliminary and permanent injunctive relief against Defendants, and each of their officers, directors, agents, servants, employees, and successors; any person who directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with the Defendants, and all those in

active concert of participation of Defendants, enjoining the Defendants' violations of the Act, or successor statute.

2. For a judgment in an amount to be determined at trial against the Defendants for restitution, disgorgement, and other equitable relief pursuant to § 11-51-602(2), C.R.S., and for damages, rescission, interest, costs, reasonable attorneys' fees, and such other legal and equitable relief as the Court deems appropriate, pursuant to § 11-51-602(2), C.R.S., all on behalf of persons injured by the acts and practices of the Defendant constituting violations of the Act.

3. For such other and further relief as the Court deems proper.

Dated this 28th day of April, 2014.

JOHN W. SUTHERS
Attorney General

*Under C.R.C.P. 121, § 1-26(7), a printable copy is
maintained in the Office of the Attorney General*

/s/ Charles J. Kooyman

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